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Mailed: 8-14-06

In re application of

Leslie E. Smith et al.

Serial No. 10/743,936

Filed: December 23, 2003

For: FORMATION OF WIDE PAINT FILM PARTS

DECISION ON
PETITION

This is a response to Applicant's request for reconsideration of decision on petition dated February 1 2006. The original petition was under 37 CFR 1.144 to withdraw the restriction requirement mailed November 16, 2004.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee).

Applicant asserts that the product as claimed cannot be made by another, materially different process and thus MPEP 806.05(f)(B) is not satisfied and that extrusion will not work nor suffice. Applicants do not provide any arguments directed to the position that the product could not be made by extrusion. A product defined by the process by which it can be made is still a product claim. When examining a product-by-process claim, the examiner must take into account the process limitations only so far as they impart actual structural limitations to the final product. The assertion that the product cannot be made by extrusion, is insufficient to shift the burden back to the examiner, who set forth a reasonable position as to other methods of making the instantly claimed product.

The Petition is **DENIED**.

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